

RETURN DATE: December 18, 2018	:	SUPERIOR COURT
MARCY L. DIPASQUALE, JOSEPH A. FERRY, AND DEANNA M. FERRY	: :	J.D. OF NEW HAVEN
v.	:	AT NEW HAVEN
INLAND WETLANDS AND WATERCOURSES COMMISSION OF THE TOWN OF WALLINGFORD, ROBERT KLEE, COMMISSIONER OF CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION AND 5 RESEARCH PARKWAY WALLINGFORD, LLC	: : : : : : : :	NOVEMBER 29, 2018

APPEAL AND COMPLAINT

To the Superior Court for the Judicial District of New Haven, now comes,
 Plaintiffs, Marcy L. DiPasquale, of 1274 Barnes Road, Wallingford, Connecticut and Joseph A.
 Ferry and Deanna M. Ferry, 1272 Barnes Road, Wallingford, Connecticut (hereinafter
 “Plaintiffs”) appealing a Decision of November 7, 2018 of the Inland Wetlands and
 Watercourses Commission of the Town of Wallingford, Connecticut (“Commission”) granting a
 special permit with conditions on wetlands property located at the property commonly known as
 5 Research Parkway, Wallingford, Connecticut.

For this appeal the Plaintiffs complain and state the following:

1. This appeal is brought pursuant to the provisions of Sections 16.1 and 16.2 of the Inland Wetland and Watercourses Commission Regulations of the Town of Wallingford and Section 22a-43 of the Connecticut General Statutes.
2. Plaintiffs are all owners of the certain properties listed above. These properties abut the property know as 5 Research Parkway, Wallingford, Connecticut.
3. Plaintiffs are persons aggrieved by the Decision of the Commission and have standing under Section 22a-43 of the Connecticut General Statutes to bring this appeal.
4. The Commission is a municipal agency of the Town of Wallingford authorized by the Connecticut Inland Wetlands and Watercourses Act, Sections 22a-36 and 22a-45 inclusive of the Connecticut General Statutes ("IWWA").
5. Mr. Robert Klee is the Commissioner of the Department of Energy and Environmental Protection of the State of Connecticut, with an office located at 79 Elm Street, Hartford, Connecticut and being served with a copy of this appeal pursuant to Connecticut General Statutes Section 22a-43(a).
6. Legal notice of the Decision was published on November 16, 2018 in the newspaper the "Record Journal."
7. This appeal is timely as it is filed within 15 days from the notice of publication pursuant to Section 22a-43 of the Connecticut General Statutes.

8. Section 16.1 of the Wallingford Inland Wetlands and Watercourses Commission Regulations (hereinafter "Regulations") provide for a direct appeal to the Superior Court in the jurisdiction in which the subject property is located.
9. Therefore, Plaintiffs have exhausted their administrative remedies.
10. On June 4, 2018, the Applicant, 5 Research Parkway Wallingford, LLC submitted to the Commission an application for a special permit.
11. The Property which is the subject of the Application, 5 Research Parkway, consists of a total of 179.97 acres, of which 28.5 acres are wetlands.
12. The Property is also crossed by the "Muddy River." The Muddy River is an important tributary that feeds Spring Lake and, ultimately, MacKenzie Reservoir – a vital resource for the town of Wallingford that supplies much of the town's residents with water.
13. The application proposes to demolition the office building on the property – the former research and development building of Bristol Myers Squibb.
14. The application further proposes to build two new warehouses. These warehouses are massive in scope and will have a total building footprint of 1 million square feet.
15. The public hearing on the Application commenced before the Commission on July 18, 2018, September 5, 2018, October 3, 2018 and November 7, 2018.
16. During the course of the public hearing, the Commission received evidence that the soil would erode during storm events. The Commission also received evidence that sedimentation would empty into the Muddy River.

17. On November 7, 2018 the Commission rendered its Decision and granted the Special Permit with conditions.
18. One condition imposed by the Commission is the appointment of a so-called "Independent Erosion and Sedimentation Plan Implementation Monitor" hired by the Town of Wallingford and paid for by the Applicant.
19. The specific legal duties, obligations, requirements and scope of the Monitor's powers are currently being negotiated by the Applicant's attorney and the Town of Wallingford's Corporation Counsel.
20. The appointment, and subsequent negotiation of the scope of the Erosion Control Monitor's powers and duties, is illegal, arbitrary, and in excess of the statutory authority granted to the Commission by the General Assembly of the State of Connecticut.
21. While the Commission is a municipal agency of the town of Wallingford, the Commission's authority is derived solely from the Commissioner of the Connecticut Department of Energy and Environmental Protection ("DEEP") via the passage of the IWWA by the General Assembly, and the Commission's authority cannot be limited in scope or delegated away to any other municipal agency or private third party.
22. The State of Connecticut has preempted this area of law such that no other municipal agency or third party has jurisdiction to regulate activities on wetlands or that significantly impact wetlands. The Commission is the enforcement arm of the Commissioner of DEEP.

23. By its actions, after the close of the public hearing and public comment, the Commission and the Applicant are establishing an extralegal position in the person of the "Independent Erosion and Sedimentation Plan Implementation Monitor".

24. The Commission deferred defining the scope of Monitor's duties and stated that the scope of the Monitor's duties will be shaped by other town departments and the Applicant. This action is unlawful as it delegates the Commission's authority to regulate wetlands and actions that will have a significant impact on wetlands to both another municipal agency and a private third party.

25. The Commission deferred naming the Monitor and stated that the qualifications of the Monitor will be determined by other municipal agencies and the Applicant. This action is unlawful as it delegates the hiring of the Monitor to both another municipal agency and a private third party.

26. The Applicant further objected to the Monitor's ability to enforce the provisions of the Commission's Decision indicating that the Monitor was not to serve as a "czar," but rather would simply be a communicator between the town officials and the Applicant. In other words, the Monitor will be not an enforcement officer pursuant to the Section 14 of the Town's Regulations acting on behalf of the Commission, but instead the Monitor will have his own authority arbitrarily limited by the Applicant.

27. By this action, the Commission has delegated away the authority of DEEP to regulate activities significantly impacting wetlands to other municipal agencies and private third parties.

28. In granting the Application, the Commission has acted illegally, arbitrarily, and in excess of its statutory authority in that:

- a. The Commission's approval of the Application was not in accordance with and pursuant to the procedures, standards and requirements set forth in the IWWA and the town's Regulations.
- b. The Commission's decision was not supported by substantial evidence on the record.
- c. The Commission's decision was in direct contravention of substantial evidence presented on the record.
- d. The Commission's decision disregarded feasible and prudent alternatives to the regulated activity sought in the Application, which alternatives would cause less or no environmental impact to wetlands and watercourses.
- e. The Commission violated Section 22a-41 of the Connecticut General Statutes by failing to state upon the record its reasons and the bases for its decision.
- f. The Commission has denied the public the right to comment.
- g. The Commission has delegated its authority to other municipal agencies and private third parties.

h. The Plaintiffs have been denied a fair, independent and neutral decisionmaker in the Commission.

i. The Commission otherwise acted illegally, arbitrarily, in excess of its statutory authority and in abuse of its discretion to act on behalf of the Commission of the Department of Energy and Environmental Protection.

j. Such other reasons as may be determined by the Return of Record.

WHEREFORE, the Plaintiffs pray that this Court:

1. Sustain the appeal;
2. Vacate the decision granting Applicant's Special Permit;
3. Remand this matter back to the Town of Wallingford Inland, Wetlands and Watercourses Commission for a full public hearing with specific orders consistent with the Inland Wetlands and Watercourse Act of the State of Connecticut.

THE PLAINTIFFS,

By



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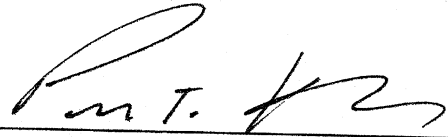
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THE TOWN OF WALLINGFORD,	:	
ROBERT KLEE, COMMISSIONER OF	:	
CONNECTICUT DEPARTMENT OF ENERGY	:	
AND ENVIRONMENTAL PROTECTION AND	:	
5 RESEARCH PARKWAY	:	
WALLINGFORD, LLC	:	NOVEMBER 29, 2018

RECOGNIZANCE AND BOND

Marcy L. DiPasquale, of 1274 Barnes Road, Wallingford, CT 06492 and Joseph A. Ferry and Deanna M. Ferry, 1272 Barnes Road, Wallingford, CT 06492, as principals and Jessica L. Heeran of 176 North Main Street, Southington, Connecticut as surety, acknowledge yourselves jointly and severally bound unto the Defendants in the recognizance of \$500.00 that the Plaintiff shall prosecute this appeal to full effect, and that the Plaintiffs shall pay any costs for which judgment may be rendered against them thereon.

THE PLAINTIFFS,

By

A handwritten signature in black ink, appearing to read "P. J. Heeran", is written over a horizontal line.

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